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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91212131
Party	Defendant Timarron Owners Association, Inc.
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Signature	/s/ John T. Wilson
Date	12/20/2013
Attachments	Pages from Applicant's Response to Opposer's Mtn to Suspend.pdf(5258256 bytes) Exhibit A.pdf(1848339 bytes) Exhibit B.pdf(4310846 bytes) Exhibit C.pdf(1867138 bytes) Exhibit D.pdf(487279 bytes) Exhibit E.pdf(1900833 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BARBARA LOUISE MORTON D/B/A TIMARRON COLLEGE PREP	§	
Opposer,	§	**Opposition No.: 91212131**
v.	§	**Mark: TIMARRON**
TIMARRON OWNERS ASSOCIATION, INC.	§	**In re Trademark No.: 85516680**
Applicant.	§	

APPLICANT'S RESPONSE TO OPPOSER'S MOTION TO SUSPEND OPPOSITION PURSUANT TO 37 CFR §2.117 AND MOTION TO CONSOLIDATE SUBJECT TO REINSTATEMENT

COMES NOW Applicant TIMARRON OWNERS ASSOCIATION, INC. ("TIMARRON") and files this Response to Opposer's Motion to Suspend Opposition Pursuant to 37 CFR § 2.117 (the "Response") and, in support of said Response, would show the Board the following:

I. INTRODUCTION

1. In response to Opposer BARBARA LOUISE MORTON D/B/A TIMARRON COLLEGE PREP's ("MORTON") Motion to Suspend Opposition Pursuant to 37 CFR §2.117 (the "Motion") and by way of introduction, Applicant would show this Board that Opposer has provided the Board with a truncated and incomplete history of the proceeding underlying and/or related to this Opposition and that this Opposition, as it is currently postured before the Board and in relation to other ongoing disputes between Applicant and Opposer, is not likely to be affected by another proceeding so as to necessitate suspension but rather involves a question of law and/or fact in common with another opposition before the Board and should be consolidated with that

opposition, subject to its reinstatement. Specifically, Applicant would show the Board as follows:

II. PROCEDURAL BACKGROUND

2. On or about July 26, 2012, TIMARRON filed an Original Petition against MORTON in the 96th Judicial District Court of Tarrant County, Texas under Cause No. 096-260449-12 (the "State Case"), raising causes of action against MORTON for trademark infringement of TIMARRON's state-registered trademark, for unjust enrichment, for tortious interference with prospective business relations, and for unfair competition.

3. On or about September 7, 2012, MORTON filed her Original Answer, Counterclaims, and Motion to Transfer in the State Case, raising causes of action against TIMARRON for declaratory judgment of non-infringement, for cancellation of TIMARRON's state-registered trademark, and for tortious interference with business relations.

4. On or about October 18, 2012, TIMARRON filed its Notice of Opposition to MORTON's federal trademark application, said application having Serial No. 85/516680 and having been published in the Official Gazette on October 16, 2013, under Opposition No. 91207557 (the "First Opposition").

5. On May 21, 2013, the Board granted MORTON an extension of time to oppose TIMARRON's federal trademark application under Serial No. 85/780484—the trademark application the subject of this Opposition—until August 21, 2013.

6. On or about June 12, 2013, TIMARRON, recognizing that its proceedings against MORTON in the State Case might have a bearing on the First Opposition, filed its Motion to Suspend Opposition Pursuant to 37 C.F.R. § 2.117 in the First Opposition.

7. On or about July 2, 2013, MORTON filed her Objection to Motion to Suspend Opposition in the First Opposition (the "Objection"), arguing that the State Case had no bearing

on any national application and that to suspend the First Opposition because of the State Case would be "to place Texas trademark law in a superior position to the federal process." Objection, p. 1, ¶ 3. A true and correct copy of said Objection is attached hereto as "Exhibit A" and is incorporated by reference as if fully set forth herein.

8. On or about July 5, 2013, because the mark the subject of the First Opposition was for the phrase "Timarron College Prep" and because TIMARRON's trademark infringement claim against MORTON in the State Case was based upon her use of the phrase "Timarron College Prep" in infringement of TIMARRON's state-registered trademark for the term "Timarron," TIMARRON filed its Reply to MORTON's Objection, arguing that the determination in the State Case of whether MORTON's use of the phrase "Timarron College Prep" was infringing could have a substantial bearing upon the First Opposition (i.e., if TIMARRON prevailed on its trademark infringement claim in the State Case, it would likely prevail in the First Opposition as a result). Accordingly, TIMARRON argued, the First Opposition should be suspended in the interest of judicial economy while the State Case remained pending.

9. On or about July 9, 2013, acknowledging that, though it might not be bound by the decision in the State Case, the State court's determination as to the trademark infringement claims could have a persuasive bearing on the Board's determination of TIMARRON's opposition to MORTON's application on the grounds of priority and likelihood of confusion, the Board entered its order granting TIMARRON's Motion to Suspend Opposition Pursuant to 37 C.F.R. § 2.117 and suspended the First Opposition (the "Suspension Order").

10. On or about July 12, 2013, MORTON filed her Traditional and No-Evidence Motion for Summary Judgment in the State Case (the "Summary Judgment Motion"), seeking no-evidence and traditional summary judgment as to TIMARRON's causes of action and as to

MORTON's cause of action for declaratory judgment of non-infringement. A true and correct copy of said Summary Judgment Motion is attached hereto as "Exhibit B" and is incorporated by reference as if fully set forth herein. Additionally, as part of her Summary Judgment Motion, MORTON waived "all causes of action and relief not requested in [the Summary Judgment Motion]," including, but not limited to her cause of action for cancellation of TIMARRON's state-registered trademark. Summary Judgment Motion, p. 6, ¶ 22.

11. On or about August 15, 2013, in light of MORTON's waiver in the Summary Judgment Motion of her causes of action and in light of MORTON's likely filing of this Opposition, TIMARRON, in preference of resolving the validity of its and MORTON's respective trademarks in a federal venue prior to final litigation of the question of infringement in a state venue, elected to non-suit and dismiss without prejudice its causes of action against MORTON in the State Case; accordingly, TIMARRON filed its Notice of Non-Suit and Dismissal Without Prejudice as to Entire Suit with Brief in Support in the State Case, in accordance with Tex. R. Civ. P. 162. *See* Tex. R. Civ. P. 162 ("At any time before the plaintiff has introduced all of his evidence other than rebuttal evidence, the plaintiff may dismiss a case, or take a non-suit which shall be entered in the minutes…Any dismissal pursuant to this rule shall not prejudice the right to an adverse party to be heard on a pending claim for affirmative relief… ."). Accordingly, because MORTON had waived her causes of action for affirmative relief and because, pursuant to the Uniform Declaratory Judgment Act and Texas case law, a cause of action for affirmative relief that does not go beyond the original complaint but merely mirrors a defendants defenses thereto is not a proper request for declaratory judgment upon which attorney's fees may be granted and is not a claim for affirmative relief, the state court in the State Case entered its Order of Dismissal on or about August 20, 2013, pursuant to its ministerial duty.

12. On or about August 21, 2013, MORTON filed this Opposition to TIMARRON's federal trademark application under Serial No. 85/780484 (the "Second Opposition").

13. On or about August 22, 2013, MORTON challenging the legitimacy of TIMARRON's non-suit and the dismissal of the State Case, the state court in the State Case held a hearing on said non-suit (the "Non-Suit Hearing"), during which non-suit counsel for MORTON acknowledged the effectiveness and pervasiveness of MORTON's waiver in the Summary Judgment Motion; specifically, as follows:

> **THE COURT: And what about the counterclaim for disclaimer or cancellation?**
>
> **MR. WILSON [Counsel for TIMARRON]: He's waived all those as part of his MSJ, cause those were all gone. He's waived them. So the only thing that exists is the -- the attorney's fees request, and that dec action, which is just a defense action.**
>
> **MR. NORRED [Counsel for MORTON]: Well, let's be clear, Your Honor, my MSJ waives them assuming it's granted.**
>
> ...
>
> **MR. WILSON: That's not what it says. That's not what is [sic] says, Your Honor. (As read) "Defendant waives all causes of action of relief not requested in this motion." He didn't reserve anything. It was affirmative waiver.**
>
> **MR. NORRED: There you go. That's fine.**

14. Transcript of Non-Suit Hearing, p. 24, l. 21 – p. 25, l. 15. A true and correct copy of pertinent portions of the transcript of the Non-Suit Hearing is attached hereto as "Exhibit C" and is incorporated by reference as if fully set forth herein. During said Non-Suit Hearing, despite the court's inclination to agree with TIMARRON that MORTON's cause of action for declaratory judgment, Transcript of Non-Suit Hearing, p. 26, l. 17-21, the court granted MORTON an opportunity to file a brief supporting her arguments that TIMARRON's non-suit did not result in

the dismissal of the entire case, Transcript of Non-Suit Hearing, p. 27, l. 5-9.

15. Accordingly, on or about August 26, 2013 and September 3, 2013 respectively, MORTON and TIMARRON each filed a brief in support of their respective positions as to the legitimacy and effect of TIMARRON's non-suit in the State Case, which briefs the state court considered by submission. Thereafter, on or about October 28, 2013, the state court entered its Order of Dismissal, finding that TIMARRON, by and through its non-suit, had dismissed all its claims asserted and alleged against MORTON; finding that MORTON had waived all causes of action and relief not specifically requested in her Summary Judgment Motion; ordering, adjudging, and decreeing that all causes of action and counterclaims asserted in the State Case were dismissed without prejudice; and, ordering, adjudging, and decreeing that the State Case was dismissed without prejudice in its entirety (the "Final Dismissal Order"), from which Final Dismissal Order MORTON has appealed to the Second District Court of Appeals of Texas. A true and correct copy of the Final Dismissal Order is attached hereto as "Exhibit D" and is incorporated by reference as if fully set forth herein.

16. On or about November 21, 2013, TIMARRON filed its Notice of Dismissal of Civil Litigation and Motion to Re-Open and Consolidate Opposition proceedings in the First Opposition (the "Motion to Reinstate and Consolidate First Opposition"), arguing that the First Opposition should be reinstated due to the dismissal of the State Case and that, because the First Opposition and the Second Opposition both revolve around TIMARRON and MORTON's respective rights to use and/or register trademarks containing the term "Timarron," the Board should consolidate the First Opposition with this Opposition upon reinstatement of the First Opposition, pursuant to the Trademark Trial and Appeal Board Manual of Procedure. A true and correct copy of the Motion to Reinstate and Consolidate First Opposition is attached hereto as "Exhibit E" and is

incorporated by reference as if fully set forth herein. As of the date of this Response, MORTON has not responded to the Motion to Consolidate First Opposition, and said motion remains pending before the Board.

17. On or about December 11, 2013, MORTON filed her Motion seeking to have the Board suspend this Opposition, arguing that "the resolution of the state action will have significant bearing on the outcome of this proceeding." Motion, p. 2, ¶ 8.

18. Accordingly, by way of summary, the posture of the legal proceedings between TIMARRON and OPPOSER before the Board and/or in relation to each other is as follows:

(1) the First Opposition, which was suspended over MORTON's objection that the State Case had no bearing thereon on the grounds that the state court's determination of TIMARRON's cause of action for trademark infringement could have persuasive bearing upon the Board's determination of TIMARRON's opposition to MORTON's federal trademark application, remains suspended pending the Board's decision as to TIMARRON's Motion to Reinstate and Consolidate First Opposition;

(2) the State Case has been disposed of by the state court, pending MORTON's appeal thereof, with TIMARRON's causes of action—including its cause of action for trademark infringement—having been dismissed without prejudice and MORTON having waived all causes of action and relief not sought in her Summary Judgment Motion—including her cause of action for cancellation of TIMARRON's state-registered trademark;

(3) MORTON's appeal of the state court's dismissal the State Case (the "State Appeal") remains pending with the only issue for the Appellate Court to determine

presumably being whether TIMARRON's non-suit did away with MORTON's cause of action for declaratory judgment of non-infringement or whether MORTON could maintain such a cause of action independent of TIMARRON's claims; and,

(4) pending the Board's resolution of MORTON's Motion and this Response, the Second Opposition remains active, having a question of law and/or fact in common with the First Opposition—namely, MORTON and TIMARRON's respective rights to use and/or register trademarks containing the term "Timarron."

19. Accordingly, based upon the foregoing, Applicant would show the Board that this Opposition should not be suspended pursuant to 37 C.F. R. § 2.117 but that it should be consolidated with the First Opposition in accordance with Trademark Trial and Appeal Board Manual of Procedure Rule 511, as follows:

III. RESPONSE TO MOTION TO SUSPEND

20. Contrary to Opposer's arguments in her Motion, this Opposition should not be suspended in that the State Appeal does not have a direct bearing on this Opposition; in that Opposer has conceded that the State Appeal does not bar the reinstatement of a closely-related proceeding before the Board; and in that, to the extent that the State Appeal is regarded as a continuation of the State Case, the Board should not abate this Opposition in the interest of equity, as follows:

21. The State Appeal does not have a direct bearing on this Opposition in that, presumably based upon the order appealed from, the only issue upon appeal is whether Applicant's non-suit in the State Case was sufficient to extinguish Opposer's lingering cause of action for declaratory judgment of non-infringement of Applicant's state-registered trademark. Put another

way, the question underlying the State Appeal is whether Opposer may maintain a cause of action for declartory judgment of non-infringement—in essence, Opposer's affirmative defenses to Applicant's prior trademark infringement claims—independently of said trademark infringement claims, which question and its resolution have only a tangential and contingent bearing, if any, on this Opposition. Pursuant to 37 CFR § 2.117(a), the Board may suspend a proceeding before the Board when it is determined that the parties are involved in a civil action or another Board proceeding which may have a bearing on the case before the Board. 37 CFR § 2.117(a).

22. Although it must be noted that, generally, an appeal is regarded as a continuation of the original action, *see Burr v. Transohio Sav.*, 77 F.3d 477, *3 (Fifth Cir. Dec. 27, 1995)("By appealing the dismissal order before the lapse of the specified 60-day period, Burr effectively 'continue[d] an action commenced before the appointment of the receiver."); *Scales v. Grassman*, 264 S.W. 136, 137 (Tex. Civ. App. 1924)("In this state 'a proceeding to review a judgment either by appeal or writ of error "is but the continuation of the action in suit brought in the trial court."'"), it is unclear how such regard affects the application of 37 CFR § 2.117(a). Specifically it is unclear whether 37 CFR 2.117(a) intends for appeals to be regarded as a continuation of the underlying proceeding, thereby constituting one action; further, if an appeal is to be regarded as one action with the original proceeding for the purposes of 37 CFR 2.117(a), it is unclear whether the potential bearing of that action upon a proceeding before the Board is to be determined by reference to the issues of the appeal or the issues of the underlying original proceeding.

23. Opposer, by the arguments in her Motion, would apparently have the Board construe the State Appeal as a single action with the State Case with the bearing of such action upon this proceeding being determined by reference to issues of the State Case, arguing that "that [state] action remains active in the Second Court of Appeals" and that "the resolution of the state

action will have significant bearing on the outcome of this proceeding." Motion, p. 2, ¶¶ 6 & 7. Applicant rejects and denies this construction and application of 37 CFR § 2.117(a) and would submit to the Board that, to properly effectuate the apparent intent of 37 CFR § 2.117(a), an appeal should be regarded as a separate civil action from the underlying original proceeding or, in the alternative, to the extent an appeal is taken as a single action with the underlying original proceeding under 37 CFR § 2.117, the bearing of such single action upon a proceeding before the Board should be determined by reference to the issues of the appeal rather than the issues of the underlying original proceeding.

24. By a plain language reading of 37 CFR § 2.117(a), it would appear that the intent of the provision is further the desirable ends of increased judicial efficiency and judicial economy while avoiding any undue prejudice to the parties. Such an interpretation is readily derived from the provision's focus on the concurrent litigation of two interrelated proceedings which may have a bearing upon each other; simply put, it is counter to judicial efficiency and judicial economy to expend time and resources on two proceedings where one may be readily or more quickly disposed of by the resolution of the other. *See generally* 37 CFR § 2.117(a). That 37 CFR § 2.117(a) intends to further such ends of judicial efficiency and judicial economy without prejudice to the parties is evidenced by the fact that the application of the provision is discretionary; the provision does not require the Board to suspend a proceeding against its prudential judgment merely because another action may have some bearing upon the proceeding but rather permits the Board to suspend such proceeding at the Board's good discretion.

25. Applicant submits that Opposer's proposed construction and application of 37 CFR § 2.117(a) to the facts of this case fails to further the apparent purpose of 37 CFR § 2.117(a) in that it only tangentially and contingently, if at all, furthers the ends of judicial efficiency and

judicial economy and fails to avoid prejudice to the parties. Specifically, Opposer would have this Board suspend this Opposition for an action that may never have any bearing on this proceeding at all. Though it is admitted that the determination of whether Opposer has infringed Applicant's trademark may have some bearing upon this Board's determination of their respective rights to use and register trademarks including the term "Timarron," as this Board has previously held, *see* Suspension Order, p. 2, the State Appeal and/or the State Case may never reach that question if the State Appeal is resolved against Opposer. That is, because the issue in the State Appeal is whether Opposer may maintain her cause of action for declaratory judgment of non-infringement independently of Applicant's infringement claims, which issue has no direct bearing on this Opposition, if the State Appeal is decided against Opposer such that Opposer cannot continue her cause of action and the State Case remains dismissed without prejudice, then the State Appeal and State Case will not reach the question of Opposer's infringement and will have no bearing on this Opposition. Thus, Opposer's claim that the resolution of the state action will have substantial bearing on this Opposition is entirely contingent upon Opposer's prevailing in the State Appeal and the state action not being resolved without reaching the question of Opposer's infringement.

26. Such a contingent and potentially phantom bearing upon this Opposition cannot be said to substantially further the ends of judicial economy and judicial efficiency so as to justify abatement, particularly where such contingency would subject the Board to maintaining records for and holding open an abated proceeding in anticipation of the resolution of the oft lengthy appeal process. Indeed, the likely length of the abatement sought by Opposer further cuts against Opposer's proposed construction and application of 37 CFR § 2.117(a) in that it unduly prejudices Applicant by subjecting Applicant to a lengthy and, potentially, unnecessary delay in the registration and full enjoyment of its trademark. That is, Opposer would have this Board require

Applicant to await the lengthy resolution of an appeal, which may have no bearing upon this Opposition, merely on the chance that Opposer will prevail in the State Appeal and that the subsequent final resolution of the State Case will have some persuasive bearing on the outcome of this, then much delayed, Opposition.

27. Accordingly, Applicant submits that Opposer's proposed construction and application of 37 CFR § 2.117(a) is inconsistent with the apparent purpose of said provision and with general principles of judicial efficiency, judicial economy, fairness, and swift resolution of legal proceedings. For these reasons, Applicant respectfully requests that the Board reject Opposer's arguments and deny Opposer's Motion, holding that the issue of the State Appeal, either as an independent action or as a continuation of the State Case, does not have a bearing upon this Opposition sufficient to justify abatement. Alternatively, to the extent that the Board accepts Opposer's arguments and regards the State Appeal as a single action with the State Case and refers to the issues of the State Case in determining whether the State Appeal and the State Case have a bearing upon this proceeding, Applicant would respectfully request that the Board, in the exercise of its discretion, would decline to abate this proceeding in the interests of judicial economy, judicial efficiency, fairness, and swift resolution of this proceeding for the reasons set forth hereinabove.

28. Further, in support of its requests in this Response, Applicant would submit to the Board that Opposer may be regarded as having conceded that the State Appeal does not have sufficient bearing to support abatement of a proceeding before the Board in that Opposer has failed to respond to Applicant's Motion to Consolidate First Opposition, wherein Applicant sought to reinstate the First Opposition on the basis of the Final Dismissal Order dismissing the State Case and to consolidate said First Opposition with this Opposition. Under 37 CFR § 2.127(a), "a brief

in response to a motion shall be filed within fifteen days from the date of service of the motion...When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded." 37 CFR § 2.127(a). Under 37 CFR § 2.119(c), the time for response is extended by five (5) days when the service is made via first-class mail.

29. Applicant served Opposer with its Motion to Consolidate First Opposition via first-class mail on or about November 21, 2013, almost thirty (30) days prior to the date of this Response. Nonetheless, as of the date of this Response, Opposer has failed and/or declined to file a response to Applicant's Motion to Consolidate First Opposition. Accordingly, pursuant to 37 CFR 2.127(a), the Board may treat Opposer as having conceded the Motion to Consolidate First Opposition and as having conceded that the First Opposition should be reinstated, notwithstanding the State Appeal, and that the First Opposition should be consolidated. Applicant respectfully requests that the Board so treat Opposer and take such concessions into consideration in its determination of Opposer's Motion and this Response.

IV. MOTION TO CONSOLIDATE

30. Subject to and based upon the foregoing, and subject to the Board's granting in the First Opposition of Applicant's Motion to Consolidate First Opposition, Applicant submits that this Opposition should be consolidated with the First Opposition under TMBO 511 in that such oppositions involve common questions of law or fact. Pursuant to TBMP 511, which adopts and incorporates Fed. R. Civ. P. 42(a), "[i]f actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay." TMBP 511 (quoting Fed. R .Civ. P. 42(a). This Opposition and the First Opposition involve a common question of law or fact in that they both involve the determination of Applicant and Opposer's

respective rights to use and register trademarks including the term "Timarron." Further, pursuant to 37 CFR § 2.127, as a result of her failure to file a response to Applicant's Motion to Consolidate First Opposition, Opposer may be treated as having conceded Applicant's Motion to Consolidate First Opposition and as having conceded that this Opposition should be consolidated with the First Opposition. For these reasons, Applicant respectfully requests that the Board consolidate this Opposition with the First Opposition in the interests of judicial efficiency and judicial economy.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Applicant TIMARRON OWNERS ASSOCIATION, INC. respectfully prays that this Board deny Opposer BARBARA LOUISE MORTON D/B/A TIMARRON COLLEGE PREP's Motion in its entirety; that, subject to Opposer's Motion and this Response, and subject to the reinstatement of the First Opposition, this Opposition be consolidated with the First Opposition; and, for such further relief, at law or in equity, to which Applicant may show itself entitled.

DATED: December 20, 2013

Respectfully submitted,
WILSON LEGAL GROUP P.C.

By: */s/John T. Wilson*
John T. Wilson
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Kandace D. Walter
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ATTORNEYS FOR APPLICANT TIMARRON OWNERS ASSOCIATION, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on December 20, 2013, a true and correct copy of the foregoing was served on Warren V. Norred of The Law Office of Warren V. Norred, located at 200 E. Abram St., Ste. 300, Arlington, Texas 76010; facsimile no.: (817) 549-0161 in accordance with the Federal Rules of Civil Procedure.

*/s/*John T. Wilson
John T. Wilson

“EXHIBIT A”

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

TIMARRON OWNERS ASSOCIATION, INC	§	
Opposer	§	Opposition No: 91207557
	§	
v.	§	Mark: TIMARRON COLLEGE PREP
	§	
TIMARRON COLLEGE PREP	§	In re Trademark No: 85/516680
Applicant.	§	Publ. October 16, 2012

APPLICANT'S OBJECTION TO MOTION TO SUSPEND OPPOSITION

Applicant, **TIMARRON OWNERS ASSOCIATION, INC.,** by its attorney, hereby submits its Objection to Opposer's Motion to Suspend Opposition ("Motion"), filed without notice to Applicant, and would show the Board as follows.

1. Opposer has moved that the Board suspend the above numbered opposition due to a civil action filed in Tarrant County District Court in Texas, Cause No. 096-260449-12. Opposer attached its suit as Exhibit 1 to its Motion, and incorporated herein by reference.
2. Applicant has counter-sued Opposer, seeking cancelation of the Texas-registered mark. Applicant's counter-suit is attached as Exhibit A to this objection.
3. 37 CFR § 2.117 does not require suspension, but only states the Board *may* suspend the proceedings. The referenced state civil suit is based on a Texas-registered mark, and has no bearing on any national application. As the civil suit has no bearing on the Opposition, there is no good reason to suspend the Opposition. Moreover, to abate proceedings in this Opposition is to place Texas trademark law in a superior position to the federal process.
4. Further, the Board should deny the motion because Opposer has failed to provide service of its motion to Applicant. The certificate of service on the Motion states only that Opposer served Applicant, but fails to state by what method Applicant was served, and is therefore not compliant. As stated in the Notes of Advisory Committee on 1991

amendments of Fed Rules Civ Proc R 5, "The certificate will generally specify the date as well as the manner of service, but parties employing private delivery services may sometimes be unable to specify the date of delivery." Applicant denies that it was provided any service whatsoever, and has attached a supporting affidavit as Exhibit B.

Prayer

WHEREFORE, Applicant respectfully requests that the Board deny the Motion and continue the Opposition proceeding.

Respectfully submitted,

By: /Warren V. Norred/
Warren V. Norred, Texas Bar No. 24045094
200 E. Abram, suite 300, Arlington, TX 76001
Tel. (817) 704-3984, Fax. (817) 549-0161
Attorney for Applicant

CERTIFICATE OF SERVICE - I certify that on July 2, 2013, a true and correct copy of APPLICANT'S OBJECTION TO MOTION TO SUSPEND OPPOSITION above was served by fax to John Wilson at 972.248.8088.

Warren V. Norred

Exhibit A

Cause No. 096-260449-12

TIMARRON OWNERS ASSOC., INC.	§	**IN THE DISTRICT COURT**
Plaintiff,	§	
	§	
v.	§	**96TH JUDICIAL DISTRICT**
	§	
BARBARA LOUISE MORTON D/B/A/	§	
TIMARRON COLLEGE PREP	§	**TARRANT COUNTY, TEXAS**
Defendant.	§	

DEFENDANT MORTON'S FIRST AMENDED ORIGINAL ANSWER, COUNTERCLAIMS, and MOTION TO TRANSFER

NOW COMES Defendant BARBARA LOUIS MORTON, files this Original Answer in the above-styled and numbered cause, denying Plaintiff's claims, asking the Court for a declaration that Defendant is not infringing any common law trademark claimed by Plaintiff, and once the declaration is established, a transfer to Travis County District Court so that Defendant may seek cancellation of the Texas-registered trademark of TIMARRON OWNERS ASSOCIATION, INC, and would show the following:

I. PARTY VERIFICATION

1. Defendant/Counter-Plaintiff, BARBARA MORTON, is an individual residing in Tarrant County, Texas, and may be contacted through her attorney of record, Warren Norred.
2. Plaintiff TIMARRON OWNERS ASSOCIATION, INC. has already appeared in this suit.

II. JURISDICTION AND VENUE

3. The subject matter in controversy is within the jurisdictional limits of this court.
4. Plaintiff has established venue in Tarrant County, so venue for the counterclaims is also properly in Tarrant County under TEX. CIV. PRAC. & REM. CODE § 15.062(a).
5. Counterclaims against Plaintiff may require transfer to Travis County if the suit progresses to an action on the merits of those claims.

Exhibit A

III. GENERAL DENIAL

6. Defendant denies each and every allegation of Plaintiff's Original Petition.

IV. COUNTERCLAIM FOR DECLARATORY JUDGMENT

7. Defendant requests that this Court issue declaratory judgment that it has not infringed any trademark belonging to Plaintiff, pursuant to the Texas Uniform Declaratory Judgments Act, Texas Civil Practice and Remedies Code, Chapter 37, in that:

   a. Defendant's trademark has been active since 2008, during which time it has provided tutoring services, which falls under trademark International Class 41.

   b. Plaintiff's Texas-registered trademark, provided in its petition, is for insurance and financial services, falling under trademark International Class 36.

   c. Plaintiff has based its case under an incorrect theory that that every mark that includes the word "Timarron" infringes Plaintiff's mark. However, there are nearly 40 businesses in Texas that use "Timarron" or a similar mark, including a home owner's association in San Antonio, the Tamaron Property Owners Association, which has existed and used the mark for seven years prior to Plaintiff's Texas registration.

V. COUNTERCLAIM FOR DISCLAIMER OR CANCELLATION

8. Defendant requests that this Court issue an order cancelling Plaintiff's trademarks, as Plaintiff does not appear to provide services that would appropriately fall under Class 36, and should be cancelled pursuant to TEX. BUS. & COM. CODE § 16.064(4)(D) [registered mark was obtained fraudulently].

VI. COUNTERCLAIM FOR TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

9. Defendant has suffered damages for Plaintiff's agents actions that have interfered in

Exhibit A

potential leases and other contracts, and caused Defendant to suffer malicious and wanton interference, disturbance, or annoyance in her business dealings.

VII. MOTION TO TRANSFER

10. In accordance with TEX. BUS. & COM. CODE § 16.106 (2012), this action must be transferred to Travis County, as it includes an action to cancel a trademark. Defendant is content to allow discovery and time for a potential settlement before a hearing on this motion to transfer in the hope that the issue might be settled before hearing and court be required to order on this issue.

VIII. ATTORNEY FEES

11. In accordance with TEX. CIV. PRAC. & REM. CODE § 37, Defendant requests attorney fees.

IX. PRAYER

12. Defendant prays the Court, after notice and hearing or trial, enters declaratory judgment in favor of Defendant, cancel or amend Plaintiff's state-registered trademark, award Defendant the costs of court, attorney's fees, and such further relief as Defendant may be entitled to in law or in equity.

Respectfully submitted,

By: _____

Warren V. Norred, Texas Bar No. 24045094
200 E. Abram, Suite 300, Arlington, TX 76010
Tel. (817) 704-3984, Fax. (817) 549-0161

CERTIFICATE OF SERVICE - I certify that on May 17, a true and correct copy of Defendant's Original Answer above served by fax to John Wilson at 972.248.8080.

_____
Warren V. Norred

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

TIMARRON OWNERS ASSOCIATION, INC	§	
Opposer	§	Opposition No: 91207557
	§	
v.	§	Mark: TIMARRON COLLEGE PREP
	§	
TIMARRON COLLEGE PREP	§	In re Trademark No: 85/516680
Applicant.	§	Publ. October 16, 2012

EXHIBIT B
AFFIDAVIT OF WARREN NORRED

BEFORE ME, the undersigned authority, on this day personally appeared Warren Norred, who swore on oath that the following facts are true:

"My name is Warren Norred. I am over 18, of sound mind, and fully competent to make this affidavit.

"My office never received service of Opposer's Motion to Suspend Opposition, even though that motion contains a certificate of service."

"FURTHER, AFFIANT SAYETH NOT."

Warren Norred

SUBSCRIBED AND SWORN TO BEFORE ME by Warren Norred on July 2, 2013.

L. ELLEN FLINT
Notary Public, State of Texas
My Commission Expires
May 22, 2017

Notary Public, State of Texas

“EXHIBIT B”

Cause No. 096-260449-12

TIMARRON OWNERS ASSOC., INC.	§	**IN THE DISTRICT COURT**
Plaintiff,	§	
	§	
v.	§	**96TH JUDICIAL DISTRICT**
	§	
BARBARA LOUISE MORTON D/B/A/	§	
TIMARRON COLLEGE PREP	§	**TARRANT COUNTY, TEXAS**
Defendant.	§	

DEFENDANT MORTON'S
TRADITIONAL AND NO EVIDENCE MOTION FOR SUMMARY JUDGMENT

Defendant Morton asks the court to sign a final summary judgment against Plaintiff on all claims under the traditional and no-evidence standards, and in favor of Defendant's Counter-Claims.

A. Introduction

1. Plaintiff sued Defendant Morton for:
   a. trademark infringement,
   b. unjust enrichment,
   c. tortious interference with prospective business relations, and
   d. unfair competition.

2. Defendant answered the suit with counterclaims for:
   a. declaratory judgment,
   b. disclaimer or cancellation of Plaintiff's Texas-registered mark,
   c. tortious interference with business relations,
   d. motion to transfer the case to Travis County, and
   e. attorney fees.

3. Discovery in this suit is governed by a Level 2 discovery control plan.

B. Defendant moves for a No-Evidence Summary Judgment against Plaintiff's Claims

4. Trademark Infringement - Plaintiff can show no evidence that Defendant used Plaintiff's registered mark in connection with the selling and offering for sale of goods that is likely to deceive or cause confusion or mistake as to the source or origin of said good, which is required to constitute infringement under TEX. BUS. & COMM. CODE § 16.26, because

Plaintiff's mark represents only insurance & financial products found in International Trademark Class 36 (see Plaintiff's Original Petition, Exhibit A), and Defendant uses the mark only to advertise tutoring services that no reasonable person could associate with Plaintiff's mark. Without evidence of likely confusion, the infringement claim must fail.

5. Unjust Enrichment - Generally, to sustain an action for unjust enrichment, there must be some basis for the law to infer a promise on the part of the defendant to the plaintiff to pay for the benefit or property, as discussed in *Berger Engineering Co. v. Village Casuals, Inc.*, 576 S.W.2d 649, 652 (Tex. Civ. App.--Beaumont 1978, no writ) ("there must exist between the parties an implication that the party performing the services would be paid by the party accepting and benefiting by them"). The absence of such a relationship between a coventurer and the other coventurer's father, for example, defeated a coventurer's claim of unjust enrichment against the father, even though the father took depreciation and operating losses stemming from the joint venture as deductions in his personal federal income tax return in *Shwiff v. Priest*, 650 S.W.2d 894, 902 (Tex. App.--San Antonio 1983, writ ref'd n.r.e.). Plaintiff can show no relationship between the Parties that will sustain a claim for unjust enrichment, so its claim must fail.

6. Tortious Interference With Prospective Business Relations - Plaintiff's claim must fail because Plaintiff can provide no evidence on *any* of its elements, as listed in *Faucette v. Chantos*, 322 S.W.3d 901, 914 (Tex. App.--Houston [14th Dist.] 2010, no pet. h.):

   a. There must be a "reasonable probability" that the plaintiff would have entered into the prospective relations. This must be a specific relationship.

   b. The defendant's conduct must have been independently tortious or wrongful.

   c. The defendant's interference must have resulted in actual harm or damage.

d. The defendant's acts of interference must have been the proximate cause of the plaintiff's damages.

e. When the interference is with prospective business relations that are the subject of competition, the plaintiff must show defendant's actions violated antitrust laws or caused third persons to refuse to deal with the plaintiff. *Caller-Times Pub. Co. v. Triad Communications*, 855 S.W.2d 18, 22 (Tex. App.--Corpus Christi 1993, no writ).

7. Unfair Competition - Among other elements, Plaintiff must prove that Defendant's use of the trade mark would be likely to confuse the public. *Thompson v. Thompson Air Conditioning & Heating, Inc.*, 884 S.W.2d 555, 558 (Tex. App.--Texarkana 1994, no writ). As the Parties provide very different services that have no relation, Defendant's use of the mark would not be likely to confuse the public.

8. Defendant attaches affidavits to this motion as Exhibit A to establish facts in support of this motion and incorporates the affidavits by reference.

C. Argument & Authorities Supporting Defendant's No-Evidence Motion

9. A court may grant a no-evidence motion for summary judgment if the movant can show that adequate time for discovery has passed and the nonmovant has no evidence to support one or more essential elements of its claim or defense. TEX. R. CIV. P. 166a(i).

10. An adequate time for discovery has passed.

11. Defendant is entitled to summary judgment because Plaintiff cannot, by any admissible evidence, demonstrate there is any evidence to support the specific elements as discussed *supra*, causing all five of Plaintiff's substantive claims to fail.

D. Defendant also moves for a Traditional Summary Judgment against Plaintiff's Claims

12. To prevail on summary judgment, a movant must conclusively establish all elements of its cause of action as a matter of law, TEX. R. CIV. P. 166a(c); Defendant herein incorporates the prior factual discussion in previous paragraphs, and adds the additional facts and argument in support of a traditional summary judgment as follows.

13. Facts - There is no reason to believe that consumers will confuse TIMARRON OWNER'S ASSOCIATION with TIMARRON COLLEGE PREP, as consumers are already aware of these two businesses and others in operation in the Southlake and surrounding area, along with many others, and would not see yet another business in the area using the word TIMARRON as connected to Plaintiff. As discussed in Exhibit A, the following commercial enterprises exist near Plaintiff:

a. "The Courtyard at Timarron" is a current business in Southlake, TX.
b. "The Villages at Timarron" is a current business in Southlake, TX.
c. "Timarron Family Medicine, PA" is a current business in Southlake, TX.
d. "Timarron at Creekside Park" is a current business in Southlake, TX.
e. "Timarron Financial Services, LLC" is a current business in Southlake, TX.
f. "Timarron Partners, Inc." is a current business in Grapevine, TX.
g. "Timmaron LLC" is a current business in Richardson, TX.
h. "Timarron Capital Inc" is a current business in Irving, TX.
i. "Timarron Custom Homes, Inc." is a current business in Keller, TX.
j. "Timarron Venture, Ltd." is a current business in Dallas, TX.
k. "Timarron Venture One, L.C." is a current business in Dallas, TX.
l. "Timarron Shopping Center, L.P." is a current business in Dallas, TX.
m. "Timarron Mortgage Group Inc." is a current business in Dallas, TX.
n. "Timarron Land Corporation" is a current business in Mesquite, TX.
o. "Timarron Skin & Laser" is a current business in Southlake, TX.
p. "Timarron Professional Eye" is a current business in Southlake, TX.
q. "Timarron Golf Club Maintenance" is a current business in Southlake, TX.
r. "Timarron Family Medicine" is a current business in Southlake, TX.
s. "Village at Timarron 4120" is a current business in Southlake, TX.
t. "Timarron Tiger Sharks" is a current business in Southlake, TX.

14. No similarity of Goods - Plaintiff's claims requires at least a reasonable possibility that consumer confusion might result from Defendant's use of the word "Timarron", but the services provided by TIMARRON OWNER'S ASSOCIATION is not remotely connected to the educational tutoring services provided by Defendant.

15. No Confusion - After recognizing that the services offered by the Plaintiff and Defendant are so different, and there are so many other commercial enterprises using the word "Timarron", no reasonable person could be confused as to think that one organization is responsible for all of the enterprises.

16. Affirmative Defense of Laches - Applicant has been using TIMARRON as part of her mark for years, along with many other entities in the area. Timarron home owners have employed Defendant's mentoring services for years. The delay in filing suit was not reasonable or excusable. Though the Lanham Act has no Statute of Limitations, federal courts often look to state law and apply the doctrine of laches accordingly; the Texas Deceptive Trade Practices Act has a statute of limitations of two years, which supports a finding of laches in this case. Plaintiff cannot lie in wait while Defendant builds her business and then try to force a business name change.

17. Affirmative Defense of Dilution - The word "TIMARRON" is used by many businesses in the Southlake, TX area. In the minds of consumers, the word "TIMARRON" is not attached to one particular business. The word "TIMARRON" is diluted; no single entity can claim exclusive rights to the word.

18. No Colorable Claim for Common Law Trademark Confusion - Plaintiff's claim to a common law trademark is limited to its full name "TIMARRON OWNER'S ASSOCIATION", by which it is known. Defendant does not use Plaintiff's common law mark.

19. Summary of Motion for Traditional Summary Judgment - Based on the above facts, Defendant asks the Court for a declaration that Defendant is not infringing Plaintiff's registered mark, and award fees in accordance with TEX. CIV. PRAC. & REM. CODE § 37, in accordance with the following paragraph.

E. Attorney Fees

20. Defendant is entitled, under the authority of TEX. CIV. PRAC. & REM. CODE § 37, to reasonable and necessary attorney fees that were incurred in the prosecution of this suit and contingent attorney fees in case of unsuccessful appeal, as supported by Exhibit B, including:
    a. Defendant is entitled to attorney fees incurred in the amount of **$7515.00.**
    b. If this case is unsuccessfully appealed to the court of appeals, Defendant is entitled to an additional $15,000; if to the Texas Supreme Court, an additional amount of $15,000.

F. Prayer

21. Defendant asks for summary judgment against Plaintiff with regard to all of its claims, and summary judgment on her claim for declaratory judgment and associated attorney fees, including pre- and post-judgment interest.

22. Defendant waives all causes of action and relief not requested in this motion.

Respectfully submitted,

By: _____

Warren V. Norred, Texas Bar No. 24045094
200 E. Abram, Suite 300, Arlington, TX 76010
Tel. (817) 704-3984, Fax. (817) 549-0161

CERTIFICATE OF SERVICE - I certify that on July 12, 2013, a true and correct copy of Defendant's MSJ was served by fax to John Wilson at 972.248.8080.

_____
Warren V. Norred

Cause No. 096-260449-12

TIMARRON OWNERS ASSOC., INC.	§	**IN THE DISTRICT COURT**
Plaintiff,	§	
	§	
v.	§	**96TH JUDICIAL DISTRICT**
	§	
BARBARA LOUISE MORTON D/B/A/	§	
TIMARRON COLLEGE PREP	§	**TARRANT COUNTY, TEXAS**
Defendant.	§	

EXHIBIT A
AFFIDAVIT OF DEFENDANT BARBARA MORTON

BEFORE ME, the undersigned authority, on this day personally appeared Barbara Morton, who swore on oath that the following facts are true:

"My name is Barbara Louis Morton. I am over 18 years of age, of sound mind, and fully competent to make this affidavit. I have personal knowledge of the facts stated herein and they are all true and correct."

1. "I did not intentionally use 'TIMARRON' in the name of my tutoring service in order to take advantage of Plaintiff's name, or any of the many businesses using the same word.
2. "The use of "TIMARRON" by itself cannot be used as a trademark because it is used by so many other people that it provides no identification of the provider of any good or service.
3. "I am familiar with the commercial enterprises in and around the Dallas-Fort Worth area. I have personally seen more than a dozen entities using the name "TIMARRON" in their title, and a search on the Internet revealed the following commercial entities in north Texas.
    a. The Courtyard at Timarron is a current business in Southlake, TX.
    b. The Villages at Timarron is a current business in Southlake, TX.
    c. Timarron Family Medicine, PA is a current business in Southlake, TX.
    d. Timarron at Creekside Park is a current business in Southlake, TX.
    e. Timarron Financial Services, LLC is a current business in Southlake, TX.
    f. Timarron Partners, Inc. is a current business in Grapevine, TX.
    g. Timmaron LLC is a current business in Richardson, TX.

h. Timarron Capital Inc is a current business in Irving, TX.
i. Timarron Custom Homes, Inc. is a current business in Keller, TX.
j. Timarron Venture, Ltd. is a current business in Dallas, TX.
k. Timarron Venture One, L.C. is a current business in Dallas, TX.
l. Timarron Shopping Center, L.P. is a current business in Dallas, TX.
m. Timarron Mortgage Group Inc. is a current business in Dallas, TX.
n. Timarron Land Corporation is a current business in Mesquite, TX.
o. Timarron Skin & Laser is a current business in Southlake, TX.
p. Timarron Professional Eye is a current business in Southlake, TX.
q. Timarron Golf Club Maintenance is a current business in Southlake, TX.
r. Timarron Family Medicine is a current business in Southlake, TX.
s. Village at Timarron 4120 is a current business in Southlake, TX.
t. Timarron Tiger Sharks is a current business in Southlake, TX."

4. "The number of businesses using the word "TIMARRON" in the geographic area indicates that even if the word "TIMARRON" was at one time a valid trademark, it is too diluted to be protectable as a mark today."

5. "Besides the commercial enterprises listed above, I have seen that the USPTO provided a Notice of Allowance for "TIMARRON CAPITAL, INC." as a standard character mark in 2006 for commercial loan services. Though that mark was eventually abandoned for lack of use, the USPTO did not see any conflict between "TIMARRON CAPITAL, INC" and "TIMARRON OWNERS ASSOC., INC."

6. No reasonable person would see all of the businesses with the name "TIMARRON" in them and think that they were all owned by the same organization. It's just a common name used commercially in this geographic area. If TIMARRON OWNERS ASSOC., INC. was the first organization to use "TIMARRON" and everyone else has used it in response, then it would be unfair to wait more than 20 years of use by two dozen other entities before reacting. None of the businesses using "TIMARRON" have hidden that fact.

7. "There is no likelihood of confusion between my tutoring service and TIMARRON OWNERS ASSOC., INC."

8. "There is no similarity of goods between TIMARRON OWNERS ASSOC., INC., which is a home owner association, and my organization, which provides tutoring services."
9. "I have performed tutoring services since 1999 with the word "TIMARRON" in my entity name; I have been doing business specifically as "TIMARRON COLLEGE PREP" since at least as far back as May 2008.
10. "When I was naming my company, I learned that 'TIMARRON' meant 'child of promise' in the Hopi language. I do not recall where or how I learned that, and I do not contend that I am some sort of expert on the Hopi language. But when I learned it, I chose to use the word in my company's name on that basis."
11. "I had to hire Warren Norred to defend me in this suit. I am paying him $300 per hour, and have accumulated legal fees as detailed in Exhibit B."

Barbara L. Morton

Barbara L. Morton

SUBSCRIBED AND SWORN TO BEFORE ME by July 11 Date: 2013

Wendy A Knutson

Notary Public, State of Texas

WENDY A KNUTSON
My Commission Expires
March 8, 2016

Cause No. 096-260449-12

TIMARRON OWNERS ASSOC., INC.	§	**IN THE DISTRICT COURT**
Plaintiff,	§	
	§	
v.	§	**96TH JUDICIAL DISTRICT**
	§	
BARBARA LOUISE MORTON D/B/A/	§	
TIMARRON COLLEGE PREP	§	**TARRANT COUNTY, TEXAS**
Defendant.	§	

EXHIBIT B
AFFIDAVIT OF WARREN NORRED IN SUPPORT OF ATTORNEY FEES

BEFORE ME, the undersigned authority, on this day personally appeared Warren V. Norred, who swore on oath that the following facts are true:

"My name is Warren V. Norred. I am over 18 years of age, of sound mind, and fully competent to make this affidavit. I have personal knowledge of the facts stated herein and they are all true and correct."

"Movant Barbara Louis Morton employed Norred Law, PLLC in connection with the matter on which this suit is based. Movant is entitled to recover the reasonable attorney's fees requested herein pursuant to the Declaratory Judgment Act, TEX. CIV. PRAC. & REM. CODE § 37. It is my opinion that these fees are reasonable attorney's fees based upon the following factors:

1. The novelty and difficulty of the issue involved, the skill required to provide the legal services properly, and my experience, reputation, and expertise in performing the services;
2. The time and labor involved to perform the legal services properly; and,
3. The fee customarily charged in the community for similar services."

"I charge $300 per hour for attorney time on this case. The estimated fees in this case are, to date, $6615.00, which includes the fees for the initial consult, writing of the answer, amended

answer, handling discovery issues, preparation and service of the Motion for Summary Judgment to which this affidavit is attached. I anticipate another three hours to participate in the hearing on this motion and post-hearing issues, totaling **$7515.00.**

"In support of this accounting, I have attached a pre-bill to this affidavit as Attachment 1, reflecting a true and correct accounting of the tasks that my office has performed for this case."

"It is my opinion that attorney's fees in the amount of $5,000.00 would be a reasonable fee for the services required to perform post-judgment discovery and to satisfy the judgment by writ of execution and other procedures, $10,000.00 if appealed to the Court of Appeals, and $15,000.00 to the Supreme Court."

Warren V. Norred

SUBSCRIBED AND SWORN TO BEFORE ME by Warren V. Norred on July 12, 2013.

L. ELLEN FLINT
Notary Public, State of Texas
My Commission Expires
May 22, 2017

Notary Public, State of Texas

PRE-BILL

ATTACHMENT 1

Date: 7/12/2013
Time: 9:32AM
Page: 1 of 2

Norred Law, PLLC

Bobbie Morton
476 Cherokee Ct. S
Keller, TX 76248

Client: 12-439 Bobbie Morton
Matter: 12-439 Timarron v. Bobbie Morton - Trademark
Matter Type: LIT Litigation
Comments:
File Open Date: 7/26/2012
Billing Mode: Hourly
Bill Date: 7/12/2013
Start Date: 1/1/1900
Billing Frequency: Monthly
Last Bill:
Remarks:

Originating Timekeeper: WVN
Responsible Timekeeper: WVN
Billing Format Code: GEN
Fees/Costs Cut Date: 7/12/2013
Payments Cut Date: 7/12/2013
Type of Bill: Regular

ACCOUNT AGING	Current	30 - 59 Days	60 - 89 Days	90 Days and Over
	$ 0.00	$ 0.00	$ 0.00	$ 0.00

Fees Billed to Date: $0.00 **Costs Billed to Date:** $0.00

Fees

Ticket Number	Date	Timekeeper	Description	Hours	Amount	
17	1/25/2012	WVN	Initial disc with BM re HOA dispute.	0.33	$99.00	BL
10	4/4/2012	WVN	Email exchange with BM; decided not to send letter.	0.33	$99.00	BL
19	4/14/2012	WVN	Email with BM on decision not to get an agreement with HOA.	0.10	$30.00	BL
18	5/29/2012	WVN	Email disc with BM about new lease at Courtyard at Timarron.	0.17	$51.00	BL
11	8/22/2012	WVN	Rec'd petition.	0.50	$150.00	BL
1	8/23/2012	WVN	Rec'd rest of Pet.	0.17	$51.00	BL
2	8/24/2012	WVN	Rec'd evidence from BM, number of emails with examples of other Timarron companies.	0.50	$150.00	BL
3	8/25/2012	WVN	Rec'd additional evidence of Timarron used.	0.17	$51.00	BL
4	8/31/2012	WVN	Begin drafting answer.	0.50	$150.00	BL
5	9/6/2012	WVN	Complete Answer. Added counter-claims of tortious interference.	3.50	$1,050.00	BL
6	9/7/2012	WVN	File and serve answer	1.00	$300.00	BL
7	9/8/2012	WVN	Write Rule 11 for email and email to JW. Examined national trademark.	0.50	$150.00	BL
8	10/12/2012	WVN	Rec'd Timarron's answer.	0.50	$150.00	BL
20	11/27/2012	WVN	Wrote and filed response to Notice of Opposition.	2.00	$600.00	BL
21	12/15/2012	WVN	Sent discovery to Wilson via email.	0.25	$75.00	BL
9	1/11/2013	WVN	Wrote & served Discovery to HOA.	2.00	$600.00	BL
12	5/15/2013	WVN	Rec'd discovery requests from HOA.	0.25	$75.00	BL

Continued On Next Page

PRE-BILL

Date: 7/12/2013
Time: 9:32AM

Norred Law, PLLC

Client: 12-439 Bobbie Morton
Matter: 12-439 Timarron v. Bobbie Morton - Trademark

13	5/16/2013	WVN	Status to client. Discussion of opposition to HOA's marks.	0.25	$75.00	BL
14	5/16/2013	WVN	Email disc re: deposition of BM, set for July 15.	0.25	$75.00	BL
15	5/17/2013	WVN	Disc re: trademark case, opposition case.	0.75	$225.00	BL
16	5/17/2013	WVN	BM sent out req. discovery on 12/17, followed with phone discussion.	0.83	$249.00	BL
23	5/22/2013	EF	Emailed Admissions to Bobbie. Awaiting responses.	0.00	$0.00	BL
26	5/30/2013	EF	Prepared Admissions Responses.	1.25	$112.50	BL
24	5/31/2013	EF	Drafted Interrogatory answers.	1.75	$157.50	BL
25	5/31/2013	WVN	Instruct and draft discovery.	0.75	$225.00	BL
28	6/3/2013	EF	Drafted Production responses/emailed Bobbie/LM on Bobbie's cell.	0.75	$67.50	BL
27	6/4/2013	EF	Served Discovery Responses (Int, Adm, & Prod).	0.25	$22.50	BL
32	6/17/2013	WVN	Rec'd Motion to Compel. No hrg set yet.	0.25	$75.00	BL
30	7/3/2013	WVN	Draft MSJ.	3.00	$900.00	BL
29	7/5/2013	WVN	Finalize, file, serve MSJ.	2.00	$600.00	BL
			Total Hours:	24.85		
			Billable Hours:	24.85	$6,615.00	

Timekeeper Summary

Timekeeper EF worked 4.00 hours at $90.00 per hour, totaling $360.00.
Timekeeper WVN worked 20.85 hours at $300.00 per hour, totaling $6,255.00.

Prior Balance:	$0.00
Payments Received:	$0.00
Current Fees:	$6,615.00
Sales Tax on Fees:	$0.00
Advanced Costs:	$0.00
Sales Tax on Costs:	$0.00
Administrative Cost:	$0.00
Late Charges:	$0.00
Additional Retainer Due:	$0.00
	$0.00
TOTAL AMOUNT DUE:	**$6,615.00**

Fees and Costs [ ] Fees Only [ ] Costs Only [ ] Don't Bill [ ]

“EXHIBIT C”

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME

TRIAL COURT CAUSE NO. 96-260449-12

TIMARRON OWNERS ASSOCIATION, Plaintiff,	)	IN THE 96TH JUDICIAL
VS.	)	DISTRICT COURT OF TEXAS
BARBARA LOUISE MORTON Defendant.	)	IN AND FOR TARRANT COUNTY

HEARING

ORIGINAL

BE IT REMEMBERED that on the 22nd day of August, 2013 the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Fred Davis, judge presiding, held in Forth Worth, Tarrant, Texas;

The proceedings reported by machine shorthand.

APPEARANCES

MR. JOHN WILSON
WILSON LEGAL GROUP P.C.
SBOT NO. 24008284
16610 Dallas Parkway
Suite 1000
Dallas, Texas 75248
Phone: (972) 248-8080
Fax: (972) 248-8088
ATTORNEY FOR THE PLAINTIFF TIMARRON OWNERS ASSOCIATION

MR. WARREN NORRED
THE LAW OFFICE OF WARREN V. NORRED
SBOT NO. 24045094
200 East Abram
Suite 300
Arlington, Texas 76010
Phone: (817) 704-3984
Fax: (817) 549-0161
ATTORNEY FOR THE DEFENDANT BARBARA LOUISE MORTON

VOLUME 1 OF 1

REPORTER'S RECORD

transfer.

THE COURT: Is that it?

MR. NORRED: That's what I have.

THE COURT: All right. Now, here it says, (as read) "Counterclaim for Declaratory Judgment. Defendant requests that this Court issue declaratory judgment that is it -- that it has not infringed any trademark belonging to Plaintiff pursuant to the Texas Uniform Declaratory Judgment Act.

It's been active since 2008. It was registered provided petition, it's based this -- it's case under the incorrect theory that it's" -- so you're saying that his declaratory judgment asked for relief that it's -- you say he infringed, and he said that he didn't infringe; and that's what his declaratory judgment is based on?

MR. WILSON: Correct. Basically, a defensive non-infringement.

THE COURT: Which is -- which will not survive your nonsuit?

MR. WILSON: Correct.

THE COURT: And what about the counterclaim for disclaimer or cancellation?

MR. WILSON: He's waived all those as a part of his MSJ, cause those were all gone. He's waived them.

So the only thing that exists is the -- the

attorney's fees request, and that dec action, which is just a defense action.

MR. NORRED: Well, let's be clear, Your Honor, my MSJ waives them assuming it's granted.

THE COURT: Assuming it's --

MR. NORRED: Assuming that it's granted.

MR. WILSON: I don't think you can do that.

THE COURT: Well, I don't know about that.

MR. NORRED: Sure you can. It's assuming that the Court grants the MSJ, I'm waiving it.

MR. WILSON: That's not what it says. That's not what is says, Your Honor. (As read) "Defendant waives all causes of action of relief not requested in this motion." He didn't reserve anything. It was affirmative waiver.

MR. NORRED: There you go. That's fine.

THE COURT: Okay.

MR. NORRED: We don't really want to do that. We just want to -- let me put it this way, Your Honor, if there was no -- neither of us had applications for trademarks in D.C., I think opposing counsel might have a valid argument.

But we both have actions in D.C. where a court has, actually, said we are going to wait until this action. So that distinguishes this from all of --

MR. WILSON: Your Honor, that's, actually, incorrect. That is not a part of the lawsuit he just filed in

Federal court. He hasn't asked the Court to wait in the new lawsuit he just filed this week.

So my position is, we've nonsuited, we're gonna go up to the Federal system to handle it, and with regards to him requesting more time to respond; this case, Your Honor, University of Texas Medical Branch at Galveston, states (as read) "A trial court, generally, has no discretion to refuse, dismiss -- to dismiss a suit, and an order doing so administerial." So the Court's required to dismiss it once we file it.

MR. NORRED: Did I hear the word, generally, in there? I think so.

THE COURT: All right. Okay.

MR. WILSON: So nothings prejudiced anybody, Your Honor, 'cause the Federal court has been dealing with it, contemporaneously.

THE COURT: All right. I'm beginning to feel that the fact that your declaratory judgment is defensive, in the standpoint that it's not infringed, and he's given me case, after case, after case, that once he filed the nonsuit that your declaratory judgment goes away.

MR. NORRED: Your Honor, you've got a one-sided argument there. I've not responded to that, because there's been no hearing on it. Okay. If the Court is saying that anybody can walk in and declare at the last second, oh, here's

a bunch of case law, I'm just gonna kill it off, and then I come back later and say, no, you can't do that; where is my -- where is my remedy? Do I have to file a mandamus to talk about whether or not my claim survived?

THE COURT: All right. This is my only alternative then. I have signed an order of dismissal. With your comments there, I will allow you to contest -- I will set this order aside, and allow you to file a contest to his nonsuit taking away your cause of action.

MR. NORRED: And I will just inform the Court that I'll be adding a motion for sanctions too, because I think that there's been a --

THE COURT: That's the best I can do because --

MR. NORRED: I understand that's fine. So you're not granting an MSJ, but you're hearing a --

THE COURT: No, I'm not hearing the MSJ, because of their argument. Now, I think the fact that they filed this nonsuit, your next job would be to come in and contest the nonsuit and see where we are.

MR. WILSON: Okay. And just one more for the record, judge, it says, (as read) "Plaintiff has an absolute unqualified right to take a nonsuit upon timely motion so long as Defendant does not have a claim of affirmative relief." And that is our position, he doesn't have a claim of affirmative relief.

REPORTER'S CERTIFICATE

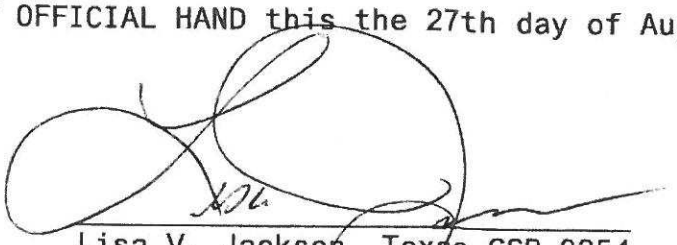
THE STATE OF TEXAS)
COUNTY OF TARRANT)

I, Lisa V. Jackson, Deputy Court Reporter in and for the 96th District Court of Tarrant County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is $235.00 and was paid by Mr. John Wilson.

WITNESS MY OFFICIAL HAND this the 27th day of August, 2013.



Lisa V. Jackson, Texas CSR 8254
Expiration Date: 12/31/14
Deputy Court Reporter
96th District Court
Tarrant County, Texas
Fort Worth, Texas
(214)632-0836

“EXHIBIT D”

CAUSE NO. 096-260449-12

TIMARRON OWNERS ASSOCIATION, INC., *Plaintiff,* VS. BARBARA LOUISE MORTON D/B/A TIMARRON COLLEGE PREP, *Defendant,*	§	IN THE DISTRICT COURT
BARBARA LOUISE MORTON D/B/A TIMARRON COLLEGE PREP, *Counterplaintiff,* VS. TIMARRON OWNERS ASSOCIATION, INC., *Counterdefendant.*	§	TARRANT COUNTY, TEXAS 96TH JUDICIAL DISTRICT

ORDER OF DISMISSAL

Came on to be considered *"Defendant Morton's Objection to Plaintiff's Notice of Nonsuit and Motion to Strike"* and *"Plaintiff's Motion for Entry of Order of Dismissal Based on Notice of Nonsuit Filed 08/15/13."* Having reviewed those matters, as well as all other pleadings on file, the Court finds that the Plaintiff's motion should be **GRANTED.**

The Court finds that Plaintiff Timarron Owners Association, Inc., by and through its nonsuit, has dismissed all its claims asserted and alleged against Defendant Barbara Louise Morton d/b/a Timarron College Prep.

Court's Minutes
Transaction # 35

The Court further finds that Defendant, in her traditional and no-evidence motion for summary judgment, has waived all causes of action and relief not specifically requested within her motion for summary judgment.

The Court further finds that neither party has any outstanding affirmative requests for relief.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that all causes of action and counterclaims asserted herein are hereby dismissed without prejudice.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this suit is hereby dismissed without prejudice in its entirety.

SIGNED this 28th day of October 2013.

R. H. WALLACE, JR., JUDGE PRESIDING

“EXHIBIT E”

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark Serial No.: 85/516680
Mark: TIMARRON COLLEGE PREP
Published in the Official Gazette on October 16, 2012

TIMARRON OWNERS ASSOCIATION, INC
Opposer,

v.

TIMARRON COLLEGE PREP
Applicant.

Opposition No. 91207557

TIMARRON OWNERS ASSOCIATION, INC.'S NOTICE OF DISMISSAL OF CIVIL LITIGATION AND MOTION TO RE-OPEN AND CONSOLIDATE OPPOSITION PROCEEDINGS

On or about July 19, 2013 the United States Patent and Trademark Office's Trademark Trial and Appeal Board (the "TTAB") entered an order suspending the above styled opposition proceeding in light of a simultaneously pending civil action between the above referenced parties– the final determination of which was still outstanding.

At that time the TTAB cited that the civil action pending before the 96th Judicial District Court of Tarrant County, Texas under Cause No: 096-260449-12 (the "State Court Case") could have a bearing on the issues in this opposition proceeding and ordered that the parties notify the TTAB upon a final order in the State Court Case.

On or about August 21, 2013, while the State Court Case was still pending, Timarron College Prep ("College Prep") filed its Notice of Opposition against Timarron Owners

Association, Inc. (TOA) with the TTAB under Opposition No.: 91212131, in re Trademark No: 85516680 (the "College Prep Opposition").

Prior to that, on or about July 12, 2013, College Prep filed a Motion for Summary Judgment in the Sate Court Case, wherein it waived all causes of action against TOA and all relief not specifically requested within its Motion for Summary Judgment (the "College Prep MSJ"), including College Prep's case of action challenging TOA's state trademark.

At that time, in light of College Prep's waiver of its claims related to TOA's state trademark, and whereas the remaining matters at issue between the parties pertained solely to questions of infringement, TOA moved to dismiss the State Court Case, such that the validity of the parties' respective trademarks issues might be determined by the TTAB in a federal venue prior to a state court's addressing of the issue of potential infringement.

On or about October 26, 2013, the 96th Judicial District Court of Tarrant County, Texas entered a final order in the State Court Case dismissing the suit without prejudice in its entirety (the "Order of Dismissal"). A true and correct copy of said Order of Dismissal is attached hereto and incorporated by referenced herein as "Exhibit A."

Accordingly Timarron Owners Association, Inc. files this Notice of Dismissal of Civil Litigation and Motion to Re-open and Consolidate Opposition Proceedings under TBMP 511 and requests that the TTAB re-open the above styled opposition proceeding (the "TOA Opposition"). Further, TOA requests that this action be consolidated with the above referenced College Prep Opposition. Pursuant to TBMP 511, "if actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay." Because both the TOA Opposition and the College Prep Opposition revolve around TOA's and College

Prep's respective rights to register trademarks containing the term "Timarron" and around their respective uses thereof, both the TOA Opposition and the College Prep Opposition involve common questions of law and fact. Accordingly, TOA respectfully requests that the TTAB enter an order re-opening the TOA Opposition proceeding and consolidating it with the College Prep Opposition proceeding.

Dated: November 21, 2013.

Respectfully submitted,
WILSON LEGAL GROUP P.C.

By: /s/John T. Wilson

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ATTORNEYS FOR OPPOSER TIMARRON OWNERS ASSOCIATION, INC.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above Notice has been served upon Opposer, by and through its counsel of record, pursuant to Rules of Federal Civil Procedure on November 21, 2013.

Mark W. Handley
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*/s/*John T. Wilson
John T. Wilson

“EXHIBIT A”

CAUSE NO. 096-260449-12

TIMARRON OWNERS ASSOCIATION, INC., *Plaintiff,* VS. BARBARA LOUISE MORTON D/B/A TIMARRON COLLEGE PREP, *Defendant,*	§	IN THE DISTRICT COURT
BARBARA LOUISE MORTON D/B/A TIMARRON COLLEGE PREP, *Counterplaintiff,* VS. TIMARRON OWNERS ASSOCIATION, INC., *Counterdefendant.*	§	TARRANT COUNTY, TEXAS 96TH JUDICIAL DISTRICT

ORDER OF DISMISSAL

Came on to be considered *"Defendant Morton's Objection to Plaintiff's Notice of Nonsuit and Motion to Strike"* and *"Plaintiff's Motion for Entry of Order of Dismissal Based on Notice of Nonsuit Filed 08/15/13."* Having reviewed those matters, as well as all other pleadings on file, the Court finds that the Plaintiff's motion should be **GRANTED.**

The Court finds that Plaintiff Timarron Owners Association, Inc., by and through its nonsuit, has dismissed all its claims asserted and alleged against Defendant Barbara Louise Morton d/b/a Timarron College Prep.

Court's Minutes
Transaction # 35 LT

The Court further finds that Defendant, in her traditional and no-evidence motion for summary judgment, has waived all causes of action and relief not specifically requested within her motion for summary judgment.

The Court further finds that neither party has any outstanding affirmative requests for relief.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that all causes of action and counterclaims asserted herein are hereby dismissed without prejudice.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this suit is hereby dismissed without prejudice in its entirety.

SIGNED this 28th day of October 2013.

R. H. WALLACE, JR., JUDGE PRESIDING

Receipt

Your submission has been received by the USPTO.
The content of your submission is listed below.
You may print a copy of this receipt for your records.

ESTTA Tracking number: **ESTTA572246**
Filing date: **11/21/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91207557
Party	Plaintiff Timarron Owners Association, Inc.
Correspondence Address	JOHN T WILSON WILSON LEGAL GROUP PC 16610 DALLAS PARKWAY 2000 DALLAS, TX 75248 UNITED STATES john@wilsonlegalgroup.com, kandace@wilsonlegalgroup.com, sul@wilsonlegalgroup.com, ana@wilsonlegalgroup.com
Submission	Other Motions/Papers
Filer's Name	John Wilson
Filer's e-mail	john@wilsonlegalgroup.com
Signature	/s/John T. Wilson
Date	11/21/2013
Attachments	TOA Ntc of Dismissal & Mtn to Consolidate.pdf(1495001 bytes)

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